***THE HON'BLE SRI JUSTICE N.V. RAMANA**

+Writ Petition Nos. 1601 of 2003,
7577 and 24940 of 2004,
13513, 13536, 18830, 22683, 25488 of 2005,
1195, 4955, 7163, 8173, 8225, 15146, 20319 of 2006
and
3737 and 5747 of 2007

% Dated: 03.08.2007

W.P. No. 1601 of 2003

A. Jagan Mohan Rao, S/o Lakshminarasimha Rao,
aged about 58 years, Asst. Director to SDLCE,
Kakatiya University, Warangal, R/o Warangal.

..... PETITIONER

VERSUS

$ Kakatiya University, rep. by its Registrar,
Warangal.

.....RESPONDENT

! Counsel for the Petitioner: Sri P.R. Prasad

^ Counsel for Respondent: Sri Deepak Bhattacharjee, Standing

Counsel for Kakatiya University.

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> HEAD NOTE:

? Cases referred:

1. AIR 1997 SC 2758
2. AIR 1992 SC 1100
3. (1998) 4 SCC 133
4. AIR 1965 SC 1055

5. AIR 1976 SC 2428
6. 2002 (1) ALD 675 (DB)
7. 1988 Lab.I.C. NOC 6
8. 1990 Lab.I.C. 411 (DB)

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and
3737 and 5747 of 2007

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Common order:

BRIEF FACTS OF THE CASE

The petitioners, who were employees of the constituent colleges of Osmania University and absorbed in the service of Kakatiya University upon its creation, filed the present writ petitions aggrieved by the action of Kakatiya University in retiring them on attaining the age of 58 years as per the service conditions of employees of Kakatiya University, as illegal and arbitrary, and consequently to direct the Kakatiya University to continue them in service till they attained the age of 60 years as per the judgment of the Supreme Court in **Osmania University v. V.S. Muthurangam**.

The petitioners were initially appointed in different categories of posts in Arts and Science (Day and Evening) College and Law College situated in Warangal, Osmania University, during the years 1970-72. While so, a new University, known as Kakatiya University, came to be created vide Act 44 of 1976. Consequent upon creation of Kakatiya University, the Kakatiya University Act was amended in 1978 and a new provision, namely Section 44-A was inserted. By virtue of Section 44-A of the Kakatiya University Act, the constituent colleges of Osmania University, in which the petitioners were working, were brought under the administrative control and management of Kakatiya University.

The Registrar of Kakatiya University, having regard to the proviso appended to Section 44-A(b) of the Kakatiya University Act, vide circular dated 01.04.1978, called upon the employees of the

constituent colleges of Osmania University to exercise their option in the prescribed proforma as to whether they desired to be retained in the service of Osmania University or absorbed in the service of Kakatiya University, within a period of 30 clear days, failing which he/she shall be deemed to have opted to the service of Kakatiya University, and the option once made shall be final. Acting on the said circular, some of the employees of the constituent colleges of Osmania University exercised their option to be retained in the service of Osmania University while some others did not.

The petitioners state that irrespective of whether the employees of the constituent colleges of Osmania University exercised their option or not, by operation of Section 44-A of the Kakatiya University Act, all employees shall be deemed to have become employees of Kakatiya University. The petitioners state that they having not exercised their option, were absorbed in the service of Kakatiya University, and were also given promotions from time to time.

While the petitioners were continuing in the service of Kakatiya University, the non-teaching staff of Osmania University aggrieved by the action of Osmania University in not extending the age of superannuation of non-teaching staff from 58 to 60 years on par with the teaching staff, having regard to the provisions of Section 38(1) of the Osmania University Act, 1959, which provides that save as otherwise provided, every salaried officer and teacher of the University shall be appointed under a written contract, and the conditions of service relating to them shall, as far as possible be uniform except in respect of salaries payable to them. The relief claimed by the said non-teaching staff of Osmania University was allowed by a learned Judge of this High Court, which was even confirmed in appeal by a Division Bench. Aggrieved thereby, Osmania University moved the Supreme Court in appeal. The Supreme Court, in **Osmania University v. V.S. Muthurangam**[1], having interpreted the provisions of Section 38(1) of the Osmania University Act, upheld the decision of this High Court and dismissed the appeal. By virtue of the said judgment of the Supreme Court, the non-teaching staff of Osmania University are being retired at the age of 60 years.

ARGUMENTS ADVANCED ON BEHALF OF THE PETITIONERS

The learned counsel for the petitioners submitted that irrespective of whether the employees of the constituent exercised their

option to be retained in the service of Osmania University or absorbed in the service of Kakatiya University or not, by operation of Section 44-A of Kakatiya University Act, the petitioners who are employees of the constituent colleges of Osmania University, were deemed to have been absorbed in the service of the Kakatiya University. He submitted that the "proviso" appended to

Section 44-A(b) of Kakatiya University Act, provides that "absorption in the service of Kakatiya University, shall be under the terms and conditions governing the said service, which shall not be less favourable than those applicable to them prior to the date of such transfer". He submitted that had the petitioners been retained in the service of Osmania University, they would have got the benefit of the judgment of the Supreme Court in **Osmania University v. V.S. Muthurangam**, which having interpreted the provisions of 38(1) of Osmania University Act, held that the age of retirement of teaching and non-teaching staff shall be uniform i.e. 60 years, and inasmuch as Kakatiya University has not passed any orders amending

Section 44-A(b) of the Kakatiya University Act, reducing the age of superannuation of the petitioners from 60 to 58 years, they cannot be denied the benefit of the said judgment. He submitted that even if Kakatiya University alters the service conditions, yet they shall not be less favourable than those that were applicable to them prior to the date of their transfer to Kakatiya University. He submitted that the claim of the petitioners is not hit by laches, for the reason that they their right to file the writ petitions arose only in 1997 when the Supreme Court, in **Osmania University v. V.S. Muthurangam,** interpreted the provisions of Section 38(1) of the Osmania University Act, which existed at the time when the petitioners were absorbed in the service of Kakatiya University. He thus prayed that that the impugned orders, issued by the respondent-University retiring the petitioners on their attaining the age of 58 years be set aside and the respondent-University be directed to continue the petitioners in service till they attained the age of 60 years, as directed by the apex Court in **Osmania University v. V.S. Muthurangam.**

THE STAND TAKEN BY THE RESPONDENTS

On the other hand, the learned Standing Counsel for the respondent-Kakatiya University has taken a preliminary objection that the writ petitions filed by the petitioners are not maintainable inasmuch as they have not made the State Government a party respondent, and

more so having regard to the provisions of Section 49 of the A.P. Universities Act, 1991, which restrains the University from taking any steps which have financial implications. He submitted that irrespective of whether the petitioners exercised their option to be retained in Osmania University or absorbed in Kakatiya University, they having regard to the provisions of Section 44-A, were deemed to have become employees of Kakatiya University. He submitted that the petitioners, having become employees of Kakatiya University, were given promotions from time to time and also extended the benefits that were given to the employees of Kakatiya University. He submitted that, on the request made by the service associations of teaching and non-teaching staff of Universities, the Government of Andhra Pradesh had issued G.O. Ms. No.386, Education (UE) Department, dated 27.09.1988 extending the Revised Pension Rules, 1980, issued by the Government in G.O. Ms. No. 88, dated 26.03.1980, to employees of five Universities, including Kakatiya University. The petitioners opted for the said Revised Pension Rules, in which the age of superannuation of superior staff i.e. teaching and non-teaching staff is fixed as 58 years. The petitioners having availed the benefit of promotions under the Kakatiya University as also the Revised Pension Rules, now cannot contend that they should be extended the benefit of the judgment of the Supreme Court in **Osmania University v. V.S. Muthurangam**, which is applicable to employees of Osmania University, and more so when the age of superannuation of employees of Osmania University, before the absorption of the petitioners in the service of Kakatiya University, was 58 years, and in support of this submission, he placed reliance on the judgment of the Supreme Court in **Canara Bank v. M.S. Jasra**[2]. In support of his contention that the petitioners having been absorbed in the service of Kakatiya University cannot claim the benefits available to the employees of Osmania University, he placed reliance on the judgment of the Supreme Court in **Union of India v. Bhola Dutt Pandey**[3]**.** He submitted that the petitioners having been absorbed in the service of Kakatiya University and having accepted the service conditions applicable to its employees, are estopped from contending that they are governed by the service conditions applicable to employees of Osmania University, and in support of this argument, he placed reliance on the judgments of

the apex Court in **Gyarsi Bai v. Dhansukh Lal**[4] and **G. Sarana v. Lucknow University**[5]. He submitted that the petitioners having accepted the Revised Pension Rules, in the year 1988, wherein it is clearly stated that the age of superannuation is 58 years, cannot contend that they are entitled to continue in service till they attain the age of 60 years, and that their claim is hit by delay and laches, and in support of this argument, he pressed into service a judgment of the Division Bench of this Court in **Mohd. Ameeruddin v. Osmania University**[6]. He prayed that the writ petitions be dismissed.

Heard the learned counsel for the petitioners and the learned Standing Counsel for the respondent-University and perused the affidavit, additional affidavit, counter affidavit and additional affidavit and material papers produced by the respective parties.

THE QUESTION THAT ARISES FOR CONSIDERATION

Whether the petitioners who were employees of the constituent colleges of Osmania University and who were absorbed in the service of Kakatiya University upon its formation, are entitled to continue in service till they attain the age of 60 years by extending the benefit of the judgment of the Supreme Court in **Osmania University v. V.S. Muthurangam**?

OPINION OF THE COURT

The fact that the petitioners were appointed under the provisions of the Osmania University Act, 1951 and were employees of the constituent colleges of Osmania University, namely Arts and Science (Day and Evening) College and the Law College, is not in dispute. In the year 1976, the Legislature enacted the Kakatiya University Act, 1976, creating a new University known as “Kakatiya University”. After creation of Kakatiya University, by Act 8 of 1978, the Legislature amended Section 44 of the Kakatiya University Act and incorporated a new provision namely Section 44-A of the Kakatiya University Act, which envisaged the transfer of the constituent colleges of Osmania University, in which the petitioners were working, to and were brought under the administrative control and management of Kakatiya University. Section 44-A of Kakatiya University Act, reads as under:

44-A Notwithstanding anything contained in the Osmania University Act, 1959 or the statutes made thereunder, the two constituent colleges of Osmania University, namely the Arts and Science (Day and Evening) College and the Law College located

within the University area of the Kakatiya University, shall as from the commencement of the Kakatiya University (Amendment) Act, 1978, (hereinafter referred to as the said Act) cease to be constituent colleges of the Osmania University, and become the University Colleges of Kakatiya University and thereupon,

(a) (i) the control and management of the said colleges; and
(ii) all the properties, assets and liabilities and the rights and obligations of the Osmania University in relation thereto; shall stand transferred to, vest in or devolve upon, the Kakatiya University, and

(b) every person, who has been immediately before the commencement of the said Act, serving in or attached to the said colleges, shall become, as from such commencement, an employee of the Kakatiya University and shall hold his office or service therein by the same tenure, on the same remuneration and upon the same terms and conditions and same rights and privileges as to pension and gratuity and other like matters as he would have held the same under the Osmania University before the said commencement and shall continue to do so unless and until his employment in the Kakatiya University is duly terminated or until his remuneration, terms and conditions of employment are duly altered by the Kakatiya University:

Provided that any teacher or other employee serving in, or attached to any of the said colleges transferred to the Kakatiya University along with the post held by him shall be given an option to be exercised within such time and in such manner as may be specified in the Kakatiya University, either to be absorbed in the service of the Kakatiya University under the terms and conditions, governing the said service, which shall not be less favourable than those applicable to him prior to the date of such transfer, or to be retained in the service of the Osmania University.

The proviso appended to Section 44-A(b) of Kakatiya University Act, merely provides for calling for options, before the employees of constituent colleges are absorbed into service of Kakatiya University. Having regard to the said proviso, the Registrar of Kakatiya University, vide Circular dated 01.04.1978 called upon the employees of the constituent colleges to exercise their option within 30 days from its issuance, as to whether they want to be retained in the service of Osmania University or absorbed in the service of Kakatiya University under the terms and conditions governing his/her service, which shall not be less favourable than those applicable to him/her prior to the date of his/her transfer to the Kakatiya University, and clearly indicating that the option so exercised shall be final. Acting on the said circular, some of the employees of the constituent colleges exercised their option and some did not.

Irrespective of whether the employees of the constituent colleges exercised their option to be retained in the service of Osmania University or absorbed in the service of Kakatiya University, it is the admitted case of both the petitioners as well as the respondent-Kakatiya University that by operation of Section 44-A of the Kakatiya

University Act, all the employees of the constituent colleges, became the employees of Kakatiya University. At the time when the petitioners were absorbed in the service of Kakatiya University, it is the admitted case of both the petitioners as well as the respondent-University that the age of superannuation of employees of both Osmania University and Kakatiya University was 58 years. The petitioners, upon being absorbed in the service of Kakatiya University, were governed by the service conditions of the said service, which were not less favourable than those that were applicable to them in Osmania University, and they were not only promoted from time to time, but were also extended the benefits that were applicable to the employees of Kakatiya University.

The employees of Kakatiya University, both teaching and non-teaching, were originally governed by the Liberalized Pension Rules, 1961 and Family Pension Rules, 1964, and so also the petitioners on their absorption into the said service. While so, the Government issued G.O. Ms. No. 88, dated 26.03.1980, framing Revised Pension Rules to its employees. The same were not made applicable to employees of the Universities because they were said to be enjoying the age of superannuation of 60 years. As the Revised Pension Rules were not made applicable to the employees of Universities, the service associations of Kakatiya University made representations to the authorities requesting them to extend the benefit of the Revise Pension Rules to them also. As can be seen from the material papers produced by the respondent-University, the Kakatiya University Syndicate, in their meeting held on 12.12.1986 having considered the fact that a number of teaching an non-teaching staff of the University retired, and service associations were constantly requesting the University authorities to introduce the Revised Pension Rules, 1980 to them on par with the Government Employees, resolved to send proposal to the Government for extending the Revised Pension Rules to the non-teaching staff of Kakatiya University also.

The Government having considered the proposal sent by Kakatiya University on 23.12.1986, vide G.O. Ms. No. 386, Education (UE) Department, dated 27.09.1988, extended the benefit of the Revised Pension Rules, issued in G.O. Ms. No. 88, dated 26.03.1980, to non-teaching staff and class IV employees of five Universities, including Kakatiya University, on condition that the age of superannuation of employees of superior service would be 58 years

and that of Class-IV employees would be 60. Thereafter, the Vice-Chancellor of Kakatiya University, vide orders dated 12.11.1988 accorded approval for adoption of the Revised Pension Rules, to non-teaching staff of the University, in anticipation of approval of the Kakatiya University Executive Council. Subsequently, in the meeting held on 04.08.1990, the Executive Council of Kakatiya University, ratified the action of the Vice Chancellor.

During the pendency of the ratification, the Registrar of Kakatiya University issued orders dated 11.12.1988 calling for options from the employees as to whether they intended to opt for the Revised Pension Rules. In pursuance of the said orders, it is the case of the respondent-University and admitted to by the petitioners that they have exercised their option to have the benefit of the Revised Pension Rules. Under the Revised Pension Rules, it is the case of the respondent-University, as is evident from their additional counter, the age of retirement of employees is fixed at 58 and the gratuity payable is fixed at Rs.3,50,000/- (maximum) with commutation at 40%, while under the Liberalized Pension Rules, 1961, though the age of retirement is fixed at 60 years, the gratuity payable is Rs.1,00,000/- with commutation at 33%, which is less than the benefit extended under the Revised Pension Rules. Though the Revised Pension Rules, provided for lesser age of superannuation, but it provided for higher gratuity amount. The petitioners having opted for the benefit of the Revised Pension Rules, 1980, which provided for payment of higher gratuity amount, cannot claim the extended age of superannuation upto 60 years as provided under the Liberalized Pension Rules, 1961, which in fact, provides for payment of lesser gratuity amount, and more particularly when the G.O., which extended the benefit of the Revised Pension Rules to the petitioners, is very specific to the effect that the age of superannuation of non-teaching staff, would be 58 years.

Since the petitioners have opted for the Revised Pension Rules, whereunder the age of superannuation is fixed at 58 years, it may be noticed whether they are entitled to be extended the benefit of the judgment of the Supreme Court in **Osmania University v. V.S. Muthurangam**, and more particularly, when they are now not the employees of Osmania University. The petitioners, admittedly, now are not employees of Osmania University, they having been absorbed in the service of Kakatiya University, are governed by the service conditions of the said University. The petitioners state that as per the

proviso appended to Section 44-A(b) of Kakatiya University Act, their absorption in the service of Kakatiya University, shall be under the terms and conditions, governing the said service, which shall not be less favourable than those that were applicable to them prior to the date of their transfer from Osmania University to Kakatiya University. It is their case that since as on the date when the petitioners were absorbed in the service of Kakatiya University, Section 38(1) of Osmania University Act, which is *pari materia* with Section 39(1) of A.P. Universities Act, provided for uniformity in service conditions, was in existence, they should be given the benefit of the extended age of superannuation i.e. 60 years, as interpreted by the Supreme Court in **Osmania University v. V.S. Muthurangam**. As stated supra, the petitioners now are no more the employees of Osmania University. No doubt, when the petitioners were absorbed in the service of Kakatiya University, Section 38(1) of Osmania University Act, which provided for uniformity of service conditions, was in existence, but the fact remains, the petitioners on their absorption in Kakatiya University, came to be governed by the service of the said University, but on the same terms and conditions on which they were appointed in Osmania University. At the time when the petitioners were absorbed in the service of Kakatiya University, it is stated by the respondent-University that the age of superannuation of employees of Osmania University, was only 58 years. The benefit of such age of superannuation, it is admitted by the petitioners, was extended to them by the respondent-University upon their absorption into the said service. But it is their case that had they continued in the service of Osmania University, they would have got the benefit of the judgment of the Supreme Court in **Osmania University v. V.S. Muthurangam**. The petitioners, admittedly, neither opted for their retention in the service of Osmania University nor absorption in Kakatiya University. By operation of Section 44-A(b) of Kakatiya University Act, they became employees of Kakatiya University, and were governed by the said service. They having become employees of Kakatiya University, cannot contend that they should be extended the benefit, which had arisen as a consequence of the interpretation of a provision under the Osmania University Act, by the Supreme Court. As per Section 44-A(b) of Kakatiya University Act, every person who was immediately before the commencement of the Kakatiya University Act, serving in or attached to the Osmania University i.e., constituent colleges, namely, Arts and Science (Day

and Evening) College and the Law College located within the University area of Kakatiya University, shall become, as from such commencement, an employee of Kakatiya University, and shall hold office or service therein by the same terms and conditions, as he would have held the same under the Osmania University, before the commencement of Kakatiya University Amendment Act i.e. before 1978. The benefit extended to the employees of Osmania University on an interpretation of Section 38(1) of the Osmania University Act, was consequent to the judgment dated 27.02.1987 of a learned single Judge of this High Court reported in **V.S. Muthurangam v. Osmania University**[7]**,** which was confirmed by a Division Bench of the High Court in **Osmania University v. V.S. Muthurangam**[8], and later by the Supreme Court in the judgment reported in **Osmania University v. V.S. Muthurangam**. Since the benefit extended to the employees of Osmania University is not prior to 1978, the petitioners are not entitled to the similar benefit under Section 44-A(b) of the Kakatiya University Act, and more particularly when the absorption of the petitioners in the service of Kakatiya University, was not on less favourable terms and conditions, which were applicable to them prior to the date of their transfer from Osmania University to Kakatiya University, and this apart on their absorption into the service of Kakatiya University, they were extended all the benefits that were given to the employees of Kakatiya University.

Even under the proviso to Section 44-A(b) of the Kakatiya University Act, the option exercised by the employees, is for their absorption in the service of the Kakatiya University under the same terms and conditions, which shall not be less favourable than those applicable to them prior to the date of such transfer from Osmania University. The benefits extended to the employees of Osmania University is subsequent to and not prior to the date of transfer of the petitioners from Osmania University to Kakatiya University. Therefore, under this clause also, the petitioners are not entitled to the benefit of the extended age of superannuation of 60 years. The petitioners, therefore, cannot be allowed to contend that the respondent-University by retiring them at the age of 58 years, has sought to provide them with less favourable terms and conditions of service than they enjoyed in Osmania University prior to their absorption in Kakatiya University. Since the petitioners on their absorption in Kakatiya University came to

be governed by the said service, and they having availed all the benefits which flowed from such service, now for the purpose of the age of superannuation, cannot be allowed to contend that they should be governed by the service of Osmania University, and extended the benefit of the extended age of superannuation i.e. 60 years as per the judgment of the apex Court in **Osmana University v. V.S. Muthurangam**, and more particularly when the age of superannuation of employees of Osmania University at the time of absorption of the petitioners in Kakatiya University was 58 years. The petitioners, now being employees of Kakatiya University, cannot seek the benefit flowing from out of the judgment of the Supreme Court in **Osmania University v. V.S. Muthurangam,** which in fact, is applicable only to the employees of Osmania University. The claim of the petitioners, who are employees of Kakatiya University, has to be rejected, for one other reason also, i.e. a Division Bench of this Court in respect of similar claim made by retired employees of Osmania University, in **Mohd. Ameeruddin v. Osmania University**, has refused to extend the benefit of the judgment of the Supreme Court, on the ground that they having retired from service approached the Court belatedly. The benefit, which was refused in respect of retired employees of Osmania University, cannot be extended to the petitioners, who are employees of Kakatiya University.

This apart, the writ petitions are liable to be dismissed for non-joinder of necessary parties, namely the State Government. Kakatiya University, though an autonomous body, is dependant on the grant provided by the Government. The State Legislature enacted A.P. Universities Act, 1991, which consolidated the laws relating to certain Universities in the State. According to Section 4 of the said Act, the six Universities mentioned therein, including Kakatiya University, shall be deemed to have been established and incorporated under the said Act. As per the provisions of Section 49 of the Universities Act, the University shall not, without the prior approval of the Government, divert earmarked funds for other purposes or upgrade any post or revise the scales of pay of its staff or implement any scheme which involves any matching contribution from the Government or create a post or posts resulting in a recurring liability on the Government either immediately or in future. Inasmuch as in the present case, the petitioners had sought the extended age of superannuation based on the judgment of the Supreme Court in **Osmania University v. V.S.**

Muthurangam, certainly it has financial implication, which in fact is a recurring liability, and without the Government being made a party to the writ petitions, no relief can be granted.

RESULT

For the foregoing reasons, I find no merit in the writ petitions, and they are accordingly dismissed. No costs.

N.V.RAMANA, J.

Date: 3rd August, 2007
KSR

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[1] AIR 1997 SC 2758
[2] AIR 1992 SC 1100
[3] (1998) 4 SCC 133
[4] AIR 1965 SC 1055
[5] AIR 1976 SC 2428
[6] 2002 (1) ALD 675 (DB)
[7] 1988 Lab. I.C. NOC 6
[8] 1990 Lab. I.C. 411 (DB)